

AMENDED IN SENATE APRIL 24, 2007

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 362

Introduced by Senator Simitian

February 20, 2007

An act to add Section 52.7 to the Civil Code, relating to identification devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Simitian. Identification devices: subcutaneous implanting.

Existing law accords every person the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his or her personal relations, subject to the qualifications and restrictions provided by law.

This bill would prohibit a person from requiring, coercing, or compelling any other individual to undergo the subcutaneous implanting of an identification device, as defined. The bill would ~~authorize the Attorney General, a district attorney, a city attorney, or provide for the assessment of civil penalties for a violation thereof, as specified, and would allow an aggrieved party to bring an action against a violator for damages and injunctive relief or for the assessment of civil penalties, as specified, to be determined by the court, subject to a 3-year statute of limitation, or as otherwise provided.~~ The bill would also ~~authorize the court to grant a prevailing plaintiff reasonable attorney's fees and costs allow an interested party to petition the court on behalf of an incompetent or minor upon specified circumstances.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~*no*.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 52.7 is added to the Civil Code, to read:
2 52.7. (a) A person shall not require, coerce, or compel any
3 other individual to undergo the subcutaneous implanting of an
4 identification device.
5 ~~(b) (1) Any person who violates or threatens to violate~~
6 ~~subdivision (a) may be enjoined in any court of competent~~
7 ~~jurisdiction.~~
8 ~~(2) Any person who violates subdivision (a) may be assessed~~
9 ~~an initial civil penalty of no more than ten thousand dollars~~
10 ~~(\$10,000), and no more than one thousand dollars (\$1,000) for~~
11 ~~each day the violation continues until the deficiency is corrected.~~
12 ~~That civil penalty may be assessed and recovered in a civil action~~
13 ~~brought in any court of competent jurisdiction. The court may also~~
14 ~~grant a prevailing plaintiff reasonable attorney's fees and costs.~~
15 ~~(3) In assessing the amount of the civil penalty for a violation~~
16 ~~of subdivision (a), the court may consider all of the following:~~
17 ~~(A) The nature and extent of the violation.~~
18 ~~(B) The number and severity of the violations.~~
19 ~~(C) The economic effect of the penalty on the violator.~~
20 ~~(D) Whether the violator took good faith measures to comply~~
21 ~~with this section and the time those measures took.~~
22 ~~(E) The willfulness of the violator's misconduct.~~
23 ~~(F) The deterrent effect that the imposition of the penalty would~~
24 ~~have on both the violator and the regulated community as a whole.~~
25 ~~(G) Any other factor that justice may require.~~
26 ~~(4) Actions pursuant to this section may be brought by any~~
27 ~~aggrieved party or by the Attorney General, a district attorney, or~~
28 ~~a city attorney.~~
29 ~~(5) An action brought pursuant to this section shall be~~
30 ~~commenced within three years of the date upon which the~~
31 ~~identification device was implanted, unless the person who received~~
32 ~~the implant lacked capacity at the time of implantation, in which~~
33 ~~case, within three years after the date of discovery.~~
34 *(b) (1) Any person who violates subdivision (a) may be assessed*
35 *an initial civil penalty of no more than ten thousand dollars*

1 (\$10,000), and no more than one thousand dollars (\$1,000) for
2 each day the violation continues until the deficiency is corrected.
3 That civil penalty may be assessed and recovered in a civil action
4 brought in any court of competent jurisdiction. The court may also
5 grant a prevailing plaintiff reasonable attorney's fees and litigation
6 costs, including, but not limited to, expert witness fees and expenses
7 as part of the costs.

8 (2) A person who is implanted with a subcutaneous identification
9 device in violation of subdivision (a) may bring a civil action for
10 actual damages, compensatory damages, punitive damages,
11 injunctive relief, any combination of those, or any other
12 appropriate relief.

13 (3) Additionally, punitive damages may also be awarded upon
14 proof of the defendant's malice, oppression, fraud, or duress in
15 requiring, coercing, or compelling the plaintiff to undergo the
16 subcutaneous implanting of an identification device.

17 (c) (1) An action brought pursuant to this section shall be
18 commenced within three years of the date upon which the
19 identification device was implanted.

20 (2) If the victim was an incompetent or minor when the
21 implantation occurred, actions brought pursuant to this section
22 shall be commenced within three years after the date the plaintiff,
23 or his or her guardian or parent, discovered or reasonably should
24 have discovered the implant, or within eight years after the plaintiff
25 attains the age of majority, whichever date occurs later.

26 (3) The statute of limitations shall not run against an
27 incompetent or minor plaintiff simply because a guardian ad litem
28 has been appointed. A guardian ad litem's failure to bring a
29 plaintiff's action within the applicable limitation period will not
30 prejudice the plaintiff's right to do so.

31 (4) A defendant is stopped to assert a defense of the statute of
32 limitations when the expiration of the statute is due to conduct by
33 the defendant inducing the plaintiff to delay the filing of the action,
34 or due to threats made by the defendant causing duress upon the
35 plaintiff.

36 (d) (1) For purposes of implantation only, any interested person
37 may file a petition for an order or judgment declaring an
38 incompetent or minor free from the control of a parent or guardian
39 who is requiring or preventing implantation of an identification
40 device.

(2) *The court shall consider that petition in light of applicable law with respect to the best interests of the incompetent or minor.*

(e) *Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13963 of the Government Code.*

~~(e)~~

(f) *The provisions of this section shall be liberally construed so as to protect privacy and bodily integrity.*

~~(d)~~

(g) *Actions brought pursuant to this section are independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to any other law.*

~~(e)~~

(h) *For purposes of this section:*

(1) *“Identification device” means any item, application, or product that is passively or actively capable of transmitting personal information, including, but not limited to, devices using radio frequency technology.*

(2) *“Person” means an individual, business association, partnership, limited partnership, corporation, limited liability company, trust, estate, cooperative association, or other entity.*

(3) *“Personal information” includes any of the following data elements to the extent they are used alone or in conjunction with any other information used to identify an individual:*

(A) *First or last name.*

(B) *Address.*

(C) *Telephone number.*

(D) *E-mail, Internet Protocol, or Web site address.*

(E) *Date of birth.*

(F) *Driver’s license number or California identification card number.*

(G) *Any unique personal identifier number contained or encoded on a driver’s license or identification card issued pursuant to Section 13000 of the Vehicle Code.*

(H) *Bank, credit card, or other financial institution account number.*

1 (I) Any unique personal identifier contained or encoded on a
2 health insurance, health benefit, or benefit card or record issued
3 in conjunction with any government-supported aid program.

4 (J) Religion.

5 (K) Ethnicity or nationality.

6 (L) Photograph.

7 (M) Fingerprint or other biometric identifier.

8 (N) Social security number.

9 (O) Any unique personal identifier.

10 (4) *“Require, coerce, or compel” includes physical violence,*
11 *threat, intimidation, retaliation, the conditioning of any private*
12 *or public benefit or care on consent to implantation, including*
13 *employment, promotion, or other employment benefit, or by any*
14 *means that causes a reasonable person of ordinary susceptibilities*
15 *to acquiesce to implantation when he or she otherwise would not,*
16 *but does not include legitimate medical uses for which the patient*
17 *or his or her guardian or parent has consented.*

18 ~~(4)~~

19 (5) “Subcutaneous” means existing, performed, or introduced
20 under or on the skin.